

House Bill 600

By: Representative Ralston of the 7th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 5 and Chapter 18 of Title 15 of the Official Code of Georgia Annotated,
2 relating to appeal and error and prosecuting attorneys, respectively, so as to change
3 provisions relating to the state's right to appeal in criminal cases; to change the standard of
4 review for appeals by the state; to authorize the state to have the right of direct appeal in
5 certain cases rather than having to seek certification; to provide the state with the right to
6 appeal orders granting a defendant a bench trial over the objection of the state; to provide the
7 state with the right to appeal orders declaring any statute, law, uniform rule of court, or treaty
8 of this state or of the United States to be unconstitutional; to provide for direct appeal when
9 a district attorney or solicitor is disqualified from prosecuting a case; to remove references
10 to the former City Court of Atlanta; to provide the state with the right to cross-appeal; to
11 provide for appeals to the superior court by the prosecuting entity in certain criminal and
12 ordinance cases tried in municipal, magistrate, recorders, and probate courts; to provide for
13 an exception for certain appeals; to amend Code Section 36-32-1 of the Official Code of
14 Georgia Annotated, relating to establishment of municipal courts, so as to correct a
15 cross-reference; to provide for related matters; to provide for an effective date; to repeal
16 conflicting laws; and for other purposes.

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

18 **SECTION 1.**

19 Title 5 of the Official Code of Georgia Annotated, relating to appeal and error, is amended
20 by revising subsection (a) of Code Section 5-5-1, relating to the power of probate, superior,
21 state, juvenile, and City of Atlanta courts, as follows:

22 "(a) The superior, state, and juvenile courts ~~and the City Court of Atlanta~~ shall have power
23 to correct errors and grant new trials in cases or collateral issues in any of the respective
24 courts in such manner and under such rules as they may establish according to law and the
25 usages and customs of courts."

SECTION 2.

Said title is further amended by revising Code Section 5-5-50, relating to the standard for review by an appellate court of first grant of new trial, as follows:

"5-5-50.

(a) The first grant of a new trial in a civil action shall not be disturbed by an appellate court unless the appellant shows that the judge abused his or her discretion in granting it and that the law and facts require the verdict notwithstanding the judgment of the presiding judge.

(b) The first grant of a new trial in a criminal action shall not be disturbed by an appellate court unless the appellant shows plain error in granting it and that the law and facts require the verdict notwithstanding the judgment of the presiding judge."

SECTION 3.

Said title is further amended by revising Code Section 5-7-1, relating to orders, decisions, or judgments appealable by the state in criminal cases, as follows:

"5-7-1.

(a) An appeal may be taken by and on behalf of the State of Georgia from the superior courts, state courts, ~~City Court of Atlanta~~, and juvenile courts and such other courts from which a direct appeal is authorized to the Court of Appeals of Georgia and the Supreme Court of Georgia in criminal cases and adjudication of delinquency cases in the following instances:

(1) From an order, decision, or judgment setting aside or dismissing any indictment, accusation, or petition alleging that a child has committed a delinquent act or any count thereof;

(2) From an order, decision, or judgment arresting judgment of conviction or adjudication of delinquency upon legal grounds;

(3) From an order, decision, or judgment sustaining a plea or motion in bar, when the defendant has not been put in jeopardy;

(4) From an order, decision, or judgment suppressing or excluding evidence, ~~illegally seized or~~ including but not limited to, excluding evidence of the results of any test for alcohol or drugs or compelling the return of seized property in the case of motions made and ruled upon prior to the impaneling of a jury or the defendant being put in jeopardy, whichever occurs first;

(5) From an order, decision, or judgment of a court where the court does not have jurisdiction or the order is otherwise void under the Constitution or laws of this state;

(6) From an order, decision, or judgment of a superior court transferring a case to the juvenile court pursuant to subparagraph (b)(2)(B) of Code Section 15-11-28;

(7) From an order, decision, or judgment ~~of a superior court~~ granting a motion for new trial or an extraordinary motion for new trial;

(8) From an order, decision, or judgment denying a motion by the state to recuse or disqualify a judge made and ruled upon prior to the defendant being put in jeopardy; ~~or~~

(9) From an order, decision, or judgment issued pursuant to subsection (c) of Code Section 17-10-6.2;

(10) From an order, decision, or judgment in the superior or state court granting the defendant a bench trial over the objection of the state;

(11) From an order, decision, or judgment made and ruled upon prior to the defendant being put in jeopardy declaring any statute, law, uniform rule of court, or treaty of this state or of the United States to be unconstitutional; or

(12) From an order disqualifying a district attorney's office as provided in subsection (g) of Code Section 15-18-5 or an order disqualifying a solicitor-general's office as provided in subsection (d) of Code Section 15-18-65.

(b) In any instance in which any appeal is taken by and on behalf of the State of Georgia in a criminal case, the defendant shall have the right to cross appeal. Such cross appeal shall be subject to the same rules of practice and procedure as provided for in civil cases under Code Section 5-6-38.

(c) Notwithstanding the provisions of subsection (a) of this Code section, if the defendant obtains a certificate of immediate review from any order, decision, or judgment prior to the impaneling of a jury or the defendant being put in jeopardy, the state may file a cross appeal by filing notice thereof within 15 days from the service of the notice of appeal; and the state may present for adjudication on the cross appeal all errors or rulings adversely affecting the state. Such cross appeal shall be subject to the same rules of practice and procedure as provided for in civil cases pursuant to Code Section 5-6-38."

SECTION 4.

Said title is further amended by revising Code Section 5-7-2, relating to certification required for immediate review of nonfinal orders, decisions, or judgments, as follows:

"5-7-2.

(a) Except as provided in subsection (b) of this Code section ~~Other than from an order, decision, or judgment sustaining a motion to suppress evidence illegally seized,~~ in any appeal under this chapter where the order, decision, or judgment is not final, it shall be necessary that the trial judge certify within ten days of entry thereof that the order, decision, or judgment is of such importance to the case that an immediate review should be had.

(b) A certificate of immediate review shall not be required from an:

(1) Order, decision, or judgment suppressing or excluding evidence which excludes the results of any test for alcohol or drugs or compels the return of seized property; provided that the prosecuting attorney certifies to the trial court that the appeal is not taken for the purpose of delay and that the evidence is substantial proof of a fact material in the proceedings; or

(2) An order, decision, or judgment described in paragraph (10) or (11) of subsection (a) of Code Section 5-7-1.

(c) For purposes of this Code section, the granting of a motion for new trial or an extraordinary motion for new trial shall be considered a final order."

SECTION 5.

Said title is further amended by revising Code Section 5-7-3, relating to right of certiorari, as follows:

"5-7-3.

A proceeding by certiorari may be taken by and on behalf of the State of Georgia from one court to another court of this state, where the right of certiorari is provided as a procedure for appealing a judgment, in the specified situations set forth in Code Sections 5-7-1 and 5-7-2."

SECTION 6.

Said title is further amended by adding two new Code sections to read as follows:

"5-7-6.

The prosecuting entity which has a right to appeal to the superior court pursuant to Chapter 4 of this title shall have the same right to appeal to a superior court as the state has as provided in Code Section 5-7-1, in cases involving:

(1) Violations of the ordinances of a political subdivision or authorities of this state which are punishable by a fine or imprisonment; and

(2) Misdemeanors which a municipal, magistrate, recorder, or probate court is authorized to conduct trials and impose sentences.

5-7-7.

(a) The provisions of this chapter shall be liberally construed to effectuate its purposes.

(b) The provisions of this chapter shall not apply to civil actions brought by the state."

SECTION 7.

Chapter 18 of Title 15 of the Official Code of Georgia Annotated, relating to prosecuting attorneys, is amended by revising subsection (g) of Code Section 15-18-5, relating to appointment of substitute for absent or disqualified district attorney, as follows:

"(g) Any order entered by a court disqualifying a district attorney's office from engaging in the prosecution shall specify the legal basis for such order. The district attorney may, on behalf of the state and prior to the defendant in a criminal case being put in jeopardy, ~~apply for a certificate of immediate review~~ directly appeal as provided in Code Section ~~5-7-2~~ 5-7-1, and such order shall be subject to appellate review as provided in Chapter 7 of Title 5."

SECTION 8.

Said chapter is further amended by revising subsection (d) of Code Section 15-18-65, relating to a solicitor's disqualification from interest or relationship, as follows:

"(d) Any order entered by a court disqualifying a solicitor-general's office from engaging in the prosecution shall specify the legal basis of such order. The solicitor-general may, on behalf of the state and prior to the defendant in a criminal case being put in jeopardy, ~~apply for a certificate of immediate review~~ directly appeal as provided in Code Section ~~5-7-2~~ 5-7-1, and such order shall be subject to appellate review as provided by Chapter 7 of Title 5."

SECTION 9.

Code Section 36-32-1 of the Official Code of Georgia Annotated, relating to establishment of municipal courts, is amended by revising subsection (a) as follows:

"(a) Each municipal corporation of this state shall, unless otherwise provided in the local law relating to a particular municipal corporation, be authorized to establish and maintain a municipal court having jurisdiction over the violation of municipal ordinances and over such other matters as are by general law made subject to the jurisdiction of municipal courts. Any such court shall be styled as a municipal court. Any reference in this Code or in any local law to a corporate court, police court, recorder's court, mayor's court, or any such court known by any other name which has jurisdiction over the violation of municipal offenses shall be deemed to mean a municipal court. Except in this Code section ~~and in the laws relating to the City Court of Atlanta~~, the terms 'corporate court,' 'corporate courts,' 'police court,' 'police courts,' 'recorder's court,' 'recorders' courts,' 'mayor's court,' and 'mayors' courts,' when such terms refer to a court of a municipal corporation, are stricken wherever they appear in any general or local law of this state and the term 'municipal court' or 'municipal courts,' whichever is appropriate, is inserted in lieu thereof. The change in

163 the name of any such court as provided for by Article VI, Section X, Paragraph I of the
164 Constitution of the State of Georgia and by this Code section shall not affect the validity
165 of any action or prosecution in such court."

166 **SECTION 10.**

167 This Act shall become effective upon its approval by the Governor or upon its becoming law
168 without such approval.

169 **SECTION 11.**

170 All laws and parts of laws in conflict with this Act are repealed.